

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America

vs.

Wilbur Eddis Cline,

Movant.

C.A. No. 6:04-1066-HMH

OPINION & ORDER

Wilbur Eddis Cline (“Cline”), a federal prisoner serving a 180-month term of imprisonment for conspiracy to possess with intent to distribute cocaine and cocaine base in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A), moves the court to “recalculate[] his criminal history category points,” claiming that an intervening change in the law renders his sentence invalid. (Mot. Recalculate Criminal History Points 3.) Because Cline challenges the validity of his sentence, the court construes his filing as a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. Cline previously filed a § 2255 motion on July 19, 2007, which was denied by the Honorable Henry F. Floyd on October 20, 2008. “Before a second or successive [habeas] application . . . is filed in the district court, the appellant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Because Cline has failed to seek authorization from the Fourth Circuit to file a successive § 2255 motion, the court must dismiss the instant motion for lack of subject matter jurisdiction. See United States v. Winestock, 340 F.3d 200, 205 (4th Cir. 2003).

It is therefore

ORDERED that the clerk of court shall recharacterize Cline's filing, docket number 293, as a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. It is further

ORDERED that Cline's § 2255 motion is summarily dismissed. It is further

ORDERED that a certificate of appealability is denied because Cline has failed to make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina
December 12, 2011

NOTICE OF RIGHT TO APPEAL

The Movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.